

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)
)
Development of Nationwide Broadband Data)
to Evaluate Reasonable and Timely)
Deployment of Advanced Services to All)
Americans, Improvement of Wireless)
Broadband Subscribership Data, and)
Development of Data on Interconnected)
Voice over Internet Protocol (VoIP))
Subscribership)

WC Docket No. 07-38

REPLY COMMENTS OF THE NEW JERSEY DIVISION OF RATE COUNSEL

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I. INTRODUCTION AND SUMMARY

The New Jersey Division of Rate Counsel (“Rate Counsel”) hereby replies to the initial submissions filed in the above-captioned proceeding regarding the collection of data on deployment, price, and adoption of broadband and related services.¹

There is support among commenters for Rate Counsel’s position that the Commission plays a key role in gathering information vital to the design of effective broadband policy.² Given the rapidly evolving nature of broadband and related services,

¹/ *In the Matter of Development of Nationwide Broadband Data to Evaluate Reasonable and Timely Deployment of Advanced Services to All Americans, Improvement of Wireless Broadband Subscribership Data, and Development of Data on Interconnected Voice over Internet Protocol (VoIP) Subscribership*, WC Docket No. 07-38, Notice of Proposed Rulemaking (“NPRM”), FCC 07-17 (rel. April 16, 2007).

²/ *See generally* Consumers Union, Consumer Federation of America, and Free Press (“CU et al.”); California Public Utilities Commission and the People of the State of California (“CPUC”); People of the State of Illinois (“Illinois”).

current data reporting requirements are outdated and inadequate to allow the Commission to formulate effective policies. Rate Counsel reiterates its call for the Commission to improve its data collection methodologies by updating the speed definition of broadband, demanding greater geographical granularity in reporting, requiring actual customer counts, enhancing collection of data on VoIP and wireless broadband services, and collaborating with local governments.

II. SPECIFIC POLICY RECOMMENDATIONS

The Commission should update its definition of broadband, and refine the speed tiers used in reporting.

In its initial comments, Rate Counsel proposed that the Commission adopt additional refinements to the speed tiers currently used in data reporting.³ Numerous other commenters agree with this recommendation.⁴ Massachusetts Department of Telecommunications and Cable and the Maine Public Utilities Commission's ("MTDC/MEPUC") proposal to define broadband "generations" (50 kbps, 500 kbps, 5 mpbs, 50 mbps, and 500 mbps) has merit because it would accommodate technological advancements while also would capturing data for "entry-level" services.⁵ Rate Counsel also agrees with CU et al. that, given the rapidly evolving bi-directional uses of the Internet, the Commission should track upload speeds as well as download speeds.⁶

³ / Rate Counsel, at 6.

⁴ / See USTelecom, at 14; Vonage Holdings Corp. ("Vonage"), at 3; Consumers Union, Consumer Federation of America, and Free Press ("CU et al."), at 4; Verizon and Verizon Wireless ("Verizon"), at 23; NASUCA, at 10-11.

⁵ / MTDC/MEPUC, at 11-12.

⁶ / CU, et al., at 25.

Broadband service providers should report data on a more granular basis.

Rate Counsel reiterates its recommendation that data be reported on a more granular level, and notes that several commenters agree with this position. Specifically, California Public Utilities Commission and the People of the State of California (“CPUC”) and the People of the State of Illinois (“Illinois”) recommend the use of the Census Block Group (“CBG”) as the common geographic basis for gathering and reporting data.⁷ Illinois explains that data based on Census Block designations would be more useful than data aggregated at the ZIP code level because it would facilitate demographic analysis of broadband deployment and adoption.⁸

Illinois also anticipates the fears of some carriers that more granular reporting might compromise confidentiality, stating that “[c]arriers’ confidentiality concerns should not block the Commission from gathering subscribership and availability at the most precise levels possible.”⁹

Broadband service providers should report actual deployment data and actual customer counts.

Connected Nation’s example of the discrepancy between FCC’s data and its own data demonstrates persuasively the need for *actual* counts of customers, as well as description of *actual* broadband deployment.¹⁰ Other commenters also highlight the

⁷ / Rate Counsel, at 5; CPUC, at 7-9; Illinois, at 2, 6-8.

⁸ / Illinois, at 3. *See also* Connected Nation, Inc. (“Connected Nation”), at 3.

⁹ / Illinois, at 4; *see discussion generally* at 4-5.

¹⁰ / Connected Nation, at 4.

erroneous conclusions that can be drawn from the Commission's statistics.¹¹ Rate Counsel agrees that data on broadband deployment must include actual counts of customers and granular representation of the areas where broadband is and is not actually available in order to be useful. It is no longer sufficient for the Commission to rely on the "at least one customer" criterion to count areas as broadband-accessible.

Broadband service providers should report data for residential customers separate from business customers.

Rate Counsel reiterates its recommendation that data for residential customers should be reported separately from business customers.¹² Residential and business customers should be separated because they have different needs, face different pricing schedules, and often are served by different companies. Data based on the aggregation of all customers is substantially less useful to policymakers than data that segments the market into logical subgroups. For example, in contrast to the claim by AT&T Inc. ("AT&T") that *half* the broadband lines in service use technologies other than DSL or cable,¹³ Commission data show that 95.3% of residential customers use either cable modem or asymmetric DSL technology.¹⁴ Excessive aggregation necessarily clouds the true picture. AT&T's comments underscore the need to analyze residential and business markets separately.

¹¹ / CU et al., at 13; MDTC/MEPUC, at 9-10.

¹² / Rate Counsel, at 5.

¹³ / AT&T, at 2.

¹⁴ / FCC, Industry Analysis and Technology Division, Wireline Competition Bureau, *High-Speed Services for Internet Access: Status as of June 30, 2006*, rel. January 2007, at Chart 6. Fiber, symmetric DSL and traditional wireline and all others are 0.9%, 0.2%, and 3.7%, respectively.

Because businesses often obtain faster broadband service than households, Rate Counsel recommends that the Commission also follow CU et al.'s proposal that broadband service providers reports speeds separately for residential and business customers so that the average does not obscure the speeds actually delivered to households.¹⁵

The Commission should enhance pricing reporting requirements.

In its initial comments, Rate Counsel advised the Commission to gather information on the pricing of internet access services, including whether there is a “premium” associated with purchasing stand-alone service.¹⁶ Rate Counsel finds that Illinois’ proposal – that the Commission acquire comparable pricing information from all service providers – adds an additional useful element to its proposed pricing gathering effort.¹⁷

The Commission should enhance VoIP and mobile broadband reporting requirements.

Rate Counsel recommended in initial comments that interconnected VoIP providers be required to furnish subscription data to the Commission.¹⁸ Such data would allow policy makers to understand changes in the market for telephone services. Vonage and Illinois agree, and add that VoIP providers should report the percent of customers

¹⁵ / CU et al., at 21.

¹⁶ / Rate Counsel, at 5.

¹⁷ / Illinois, at 9-11. See also CU et al., at 5.

¹⁸ / Rate Counsel, at 6.

obtaining broadband access from the providers themselves or their affiliates.¹⁹ This component of data reporting would “reveal the extent to which independent VoIP providers rely on stand-alone DSL and cable broadband service to compete effectively.”²⁰ Rate Counsel recommends that the Commission adopt Vonage’s proposal so that federal and state policy makers can gauge the extent to which the cable-telecommunications duopoly is dominating the broadband market and the telecommunications markets.

Rate Counsel reiterates its proposal that Form 477 reporting be adjusted to reflect *actual* mobile broadband subscribership, rather than merely the purchase of broadband-capable handsets. Other commenters join Rate Counsel in this recommendation.²¹

The Commission should collaborate with local officials in data gathering efforts.

Rate Counsel agrees with those commenters advocating greater collaboration with states.²² As MTDC/MEPUC recommend, the Commission should delegate authority to the states for data gathering.²³ In addition, Rate Counsel agrees with the recommendation of the CPUC that those entities filing Form 477 with the FCC should file simultaneously

¹⁹ / Vonage, at 5; Illinois, at 8. Illinois also notes that the FCC may be the best party to collect VoIP data, given the possible jurisdictional complexities involved.

²⁰ / Vonage, at 5. Vonage also uses its comments as a forum to urge the Commission to require ILECs and cable companies to offer consumer broadband access on a stand-alone basis. *Id.*

²¹ / See AT&T, at 5; Verizon, at 11.

²² / MTDC/MEPUC, at 6; CPUC, at 10-11; NASUCA, at 24.

²³ / MDTC/MEPUC, at 6. See also NASUCA, at 24, recommending federal-state collaboration in the design of data-gathering policies.

with state commissions. This would allow states to analyze and act upon current data, instead of waiting for such data to trickle down from the FCC to the states.²⁴

Rate Counsel disagrees strongly with AT&T's assertion that partnerships such as ConnectKentucky cannot be replicated successfully.²⁵ Local knowledge, combined with standard data gathering procedures, is likely to yield the most complete and accurate picture of true broadband deployment. This in turn will allow policy makers the opportunity to target hard-to-serve areas with greater accuracy. Rate Counsel encourages the Commission to consider the localized data gathering effort as an appropriate way of distributing a complex task among a group of area experts. Under Section 706 of the 1996 Act, Congress approved a dual role regarding broadband. State Commissions have the right to promote and advance timely, reasonable and affordable broadband. The FCC should clarify that State Commissions may independently initiate their own data collection and reporting requirements that exceed those established by the FCC.

III. CONCLUSION

Rate Counsel urges the Commission to improve its data gathering efforts for broadband and related services. Improved data collection will better inform the Commission, allowing it to meet its obligation of fostering the deployment of broadband services to all Americans.

²⁴ / CPUC, at 10-11.

²⁵/ AT&T, at 4, 16.

Respectfully submitted,

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